

1 K. Kliwer
2 of the bankruptcy.

3 Q. But right now, you don't have any
4 personal knowledge or understanding of what
5 this tri-party agreement is and the time
6 that's associated with it?

7 A. No, I don't.

8 Q. Did you ask for any clarification
9 from HSBC or Pryor, Cashman about that prior
10 to authorizing payment of these fees?

11 A. I did not. If I had, they would
12 have billed me another hour.

13 Q. Probably.

14 If you turn to page 12 --

15 MR. SNELLINGS: Off the record.

16 (Discussion held off the record.)

17 Q. If you look at page 12, there is a
18 third item down file maintenance, three
19 hours. Did you ask or anyone else ask for
20 any type of clarification as to what that
21 particular task was?

22 A. No, we didn't. I did not
23 personally.

24 Q. Do you have any understanding of
25 what that would mean in an invoice such as

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2 this?

3 A. I do not.

4 Q. Have you seen it in other invoices
5 that you have reviewed from law firms in
6 which they would charge their client for
7 final maintenance?

8 A. I don't recall specifically, but
9 I'm pretty sure they would.

10 Q. As far as you know, this particular
11 item was paid, correct?

12 A. Yes, it was.

13 Q. Would you agree that in cases such
14 as this, that maintenance of files and
15 because of numerous pleadings, correspondence
16 and documents that that is a reasonable
17 charge and one that can be expected to be
18 paid?

19 A. I would agree given that this was
20 done by a paralegal. If it was done by a
21 partner, I would have had a little more
22 concern over it.

23 Q. Turning to page 14. With regard to
24 the bankruptcy, HSBC filed a proof of claim
25 on behalf of its holders, and which was

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2 prepared of course by their counsel. And
3 there are numerous entries regarding the
4 preparation of a proof of claim, and there is
5 one that starts I think on the December 17,
6 '03 line item, preparing proof of claim.

7 Do you think it is a reasonable
8 expectation for indenture trustee to be paid
9 for those activities of filing a proof of
10 claim in the bankruptcy in which you're
11 representing their bondholders?

12 A. Yes, it would appear to be a
13 reasonable activity.

14 Q. And would you also agree that that
15 is sort of a normal course responsibility and
16 duty of an indenture trustee in representing
17 their bondholders?

18 A. I would, yes, given the bankruptcy.

19 Q. And as far as you know, these
20 entries regarding the preparation and filing
21 of proof of claim have been paid for?

22 A. Yes, they have.

23 Q. Moving right along to page 25, the
24 first plan of reordering disclosure statement
25 was filed in March of '04, correct?

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2 A. Correct.

3 Q. And as you can see on page 25 of
4 this particular exhibit, Pryor, Cashman
5 starts to spend time on a review and plan of
6 disclosure statement.

7 And as that goes through the rest
8 of the process, it did take some time. There
9 is numerous entries with regard to another
10 plan and disclosure statement as well as
11 amendments.

12 Do you -- would you agree with me
13 that that is a normal responsibility and duty
14 of an indenture trustee in a bankruptcy to
15 review and comment on the plan of disclosure
16 statement on behalf of their holders?

17 A. Yes, I would.

18 Q. And with regard to what Pryor,
19 Cashman has done in this particular -- as
20 evidenced by this particular invoice, they
21 have been paid for their work with regard to
22 reviewing commenting on the plan and
23 disclosure statement?

24 A. Yes.

25 Q. On page 28 of this invoice for

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2 April 6, 2004, there is an entry regarding
3 the preparation of notices of Citibank
4 indenture as well as a Chase indenture. We
5 already discussed this in connection with
6 HSBC's, but is it your understanding that it
7 is a function of counsel for indenture
8 trustees to assist the indenture trustee in
9 preparing notices to their holders?

10 A. That's my understanding, yes.

11 Q. And with regard to that, do you
12 think it is reasonable to expect
13 reasonable -- for an indenture trustee to
14 expect payment of their counsel fees for
15 those type of duties?

16 A. Yes.

17 Q. On page 30 of this invoice, there
18 is an entry as of 4-16-04, which indicates
19 that someone at Pryor, Cashman reviewed Fried
20 Frank letter regarding complaint against the
21 debtor and review Magten complaint to Avoid
22 Fraudulent Transfer.

23 Do you have any knowledge of the
24 complaint that they are referring to there?

25 A. I have knowledge of the -- I have

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2 knowledge of Magten's complaint, yes.

3 Q. And that is a complaint against
4 North Western?

5 A. Yes.

6 Q. And HSBC is not a party to that
7 complaint, correct?

8 A. Not to my knowledge.

9 Q. And I guess with regard to that
10 type of activity, here they are reading a
11 complaint brought by another creditor against
12 the debtor. Why would it be reasonable to
13 compensate HSBC and their counsel for those
14 types of activities?

15 MS. DENNISTON: I'm going to
16 object just on the grounds that I'm
17 not sure I understood the question.
18 There is double speculation or double
19 assumption. We're trying to project
20 what they are saying in a time
21 description. To the extent that you
22 understood what a time description is,
23 it's fine, go ahead and answer, but
24 don't try to guess.

25 A. So can you repeat the question?

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2 Q. With regard to this particular time
3 entry and HSBC's request that their counsel
4 be paid by the debtor on this, I was just
5 asking why is it reasonable that Pryor,
6 Cashman would be compensated for at least
7 what it seems to indicate here, a review of a
8 complaint in which their client is not a
9 party? Why should they be compensated from
10 the debtor with regard to that particular
11 task?

12 A. As far as the debtor compensating
13 them, they were -- HSBC and other class 7
14 holders were supporting the plan of
15 reorganization. This complaint against the
16 company obviously would have a significant
17 impact to class 7 recoveries, and given their
18 support and North Western's desire to build
19 support amongst as many constituents as
20 possible to refute this complaint, we overall
21 benefitted the estate and led to a less
22 adversary. Obviously, there have been
23 adversarial proceedings but less parties not
24 supporting the plan as we went into the
25 confirmation hearing.

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2 MR. SNELLINGS: Why don't we take
3 about a five minute break.

4 (Recess was taken.)

5 Q. Let's turn to Wilmington Trust
6 Company.

7 Now, do you have an understanding
8 of who Wilmington Trust is or what Wilmington
9 Trust is in this bankruptcy?

10 A. Yes, I do.

11 Q. Do you know who they represented as
12 the indenture trustee?

13 A. They were the indenture trustee for
14 TOPrS, T-O-P-r-S.

15 Q. And as indenture trustee, they sat
16 on the committee, correct?

17 A. Yes, I believe they did.

18 Q. Do you have any knowledge of
19 whether or not they commenced any adversary
20 proceedings in the case?

21 A. I don't recall them initiating
22 adversary proceedings.

23 Q. Just in your estimation, would
24 you -- and your experience of watching the
25 case as it developed, would you consider them

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2 an active party in the case?

3 A. Yes, I would consider them active.

4 Q. Why would you consider them an
5 active party in the case?

6 A. Basically just through
7 conversations with our counsel and seeing who
8 was present at the hearings. And I had a
9 couple of different conversations with the
10 representative from Wilmington Trust, not on
11 their fees, but more on reconciling out their
12 claim amounts.

13 Q. Was that Sandra Ortiz at
14 Wilmington?

15 A. Yes.

16 Q. And other than that particular
17 instance that you just mentioned, did you
18 have, you personally, any other interaction
19 with Wilmington or its counsel during the
20 case?

21 A. No, I had a couple of different
22 conversations with Sandra on the claims
23 reconciliation; that was the extent of it.

24 Q. By claims reconciliation, what do
25 you mean?

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2 A. We had some differences in what we
3 reflected in our statements and schedules
4 than what their claim was, and I worked
5 through the reconciliation process with
6 Sandra. To reconcile their claim to what we
7 had in the statements and schedules and
8 determine what the ultimate claim was.

9 Q. Do you know whether or not
10 Wilmington commenced any contested matters in
11 the Chapter 11 case of North Western?

12 A. I don't recall any.

13 Q. Do you recall them objecting to the
14 claims of HSBC as indenture trustee?

15 A. No, I don't recall that.

16 Q. Do you recall them with regard to
17 that objection filing a claim against HSBC
18 based on PUHCA violation?

19 A. I was not specifically involved in
20 that so I don't recall what all happened
21 around then.

22 Q. And I guess within, and you may --
23 and I apologize if you actually said this
24 before, in the context of what was going on
25 in the proceedings, I know that you talked

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2 about doing the monthly reports. With regard
3 to what was happening in the proceeding, the
4 plan of disclosure, process, objections to
5 claims, what did you follow and what didn't
6 you follow pursuant to your role at the
7 company?

8 A. I followed -- I have been very much
9 involved with our objection to various
10 claims. Typically I have signed either the
11 affidavits or the objections to various
12 claims, and I have followed -- I have not
13 followed adversary proceedings, and until
14 essentially there has been resolution to
15 those, and I kind of have an understanding
16 along the way that there was proceedings
17 going on, but have not had any involvement in
18 those.

19 I was very much involved in the
20 viewing and commenting on the plan of
21 reorganization and disclosure statement and
22 the subsequent amendments to those as we
23 filed them.

24 Q. With regard to the plan and
25 disclosure statement, what aspects of the

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2 plan and disclosure statement did you comment
3 on? I'm just speaking generally now.

4 A. Generally, the claims, the
5 different classes of claims and reconciling
6 the numbers that were included in there, and
7 just overall, reviewing and providing input
8 where I saw that I had had previous
9 involvement or that I had knowledge of what
10 was included in the plan or in the disclosure
11 statement.

12 I reviewed the entire documents,
13 but if there were cases that I didn't have
14 specific knowledge, I didn't comment on. In
15 cases where I did, I provided comments.

16 Q. In that regard, I mean you
17 understand that I represent Law Debenture
18 which is the QUIPS, all in caps.

19 Do you have an understanding with
20 regard to how the plan treated the QUIPS
21 versus the TOPrS?

22 A. Yes, I do.

23 Q. And what is that understanding?

24 A. Essentially I don't remember which
25 version we changed, but initially they were

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2 all considered part of class 8. Subsequent
3 to, I think, I believe, to the settlement
4 with Harbert and Wilmington Trust, the
5 classes were split between TOPrS and QUIPS,
6 class 8A and class 8B, and essentially with
7 the second amended plan, we offered 8B, the
8 8B claimants, common shares and warrants
9 equivalent to what was offered to the class
10 8A claimants, and that's essentially where we
11 are to date.

12 Q. And did you participate in any
13 discussions or provide comments on that
14 particular aspect of the plan, the treatment
15 of the TOPrS and the QUIPS?

16 A. Primarily in terms of reconciling
17 the amounts of the claims to what we had on
18 the books, that was pretty much the extent of
19 my involvement. In an understanding of what
20 the different offerings were.

21 Q. You had indicated earlier that you
22 had an understanding or an opinion that
23 Wilmington was an active participant in the
24 North Western bankruptcy.

25 Do you have any recollection or

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2 knowledge of any objections they filed
3 throughout the case?

4 A. I don't recall offhand what, if
5 any, objections they filed.

6 Q. Do you recall whether or not they
7 objected to the first amended plan?

8 A. I believe they did.

9 Q. Do you have any recollection of
10 what the basis of that objection was?

11 A. No, I don't.

12 Q. Do you recall whether or not
13 Wilmington conducted any discovery, meaning
14 depositions, document requests, relating to
15 their objection to the plan of
16 reorganization?

17 A. Yes, I do recall discovery request.

18 Q. And do you recall any depositions?

19 A. No, I don't recall any depositions.

20 Q. But you don't recall any of the
21 specific grounds in which they objected to
22 the plan?

23 A. No, not offhand.

24 Q. Did you participate in putting
25 together or commenting on the term sheet of

1 K. Kliever

2 the settlement between the debtor, Wilmington
3 and Harbert?

4 A. I reviewed it as it was -- as the
5 settlement was being negotiated, but in terms
6 of providing any comments to it, no.

7 Q. Do you know who represented
8 Wilmington in the Chapter 11 case?

9 A. I don't recall.

10 Q. Do you have any understanding of
11 what the relationship is between Wilmington
12 Trust Company as indenture trustee to the
13 TOPrS and Harbert? I think it is Harbert
14 Management.

15 A. Harbert Management was a holder of
16 a portion of the TOPrS and Wilmington Trust
17 was the indenture trustee for all of the
18 TOPrS.

19 Q. Do you recall who was representing
20 Harbert in the bankruptcy as counsel?

21 A. I don't recall the name of the
22 firm. I recall the gentleman very well.

23 Q. What was his name?

24 A. I don't even know his name. I just
25 remember seeing him way too often.

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2 Q. Why did you have such an occasion
3 to see him way too often?

4 A. Every bankruptcy hearing I
5 attended. I saw you way too often as well.

6 MS. DENNISTON: Don't tell him
7 what you really think.

8 A. I'm speaking from the client who is
9 paying the bills perspective. I see Karol
10 way too often do.

11 Q. Do you know if Wilmington hired any
12 financial advisors in the case?

13 A. No, I don't know that they hired
14 any.

15 Q. And how about are you familiar with
16 Golden Associates?

17 A. No.

18 Q. Do you know whether or not they
19 were hired to consult Wilmington?

20 A. No.

21 Q. Do you know of any role that Golden
22 Associates played in the bankruptcy?

23 A. I don't recall.

24 Q. Do you know what line of business
25 Harbert is in?

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2 A. My understanding is that they
3 invest in -- they are an investment company
4 investing in distressed companies. I'm sure
5 I don't know to what extent they invest in
6 other investments or otherwise.

7 Q. To your knowledge, did they -- did
8 they only work through Wilmington or did they
9 independently file motions or objections in
10 the case?

11 A. I believe they did both.

12 Q. And you do not recall who
13 represented them?

14 A. I don't recall the name.

15 Q. Did Harbert commence any adversary
16 proceedings in the case?

17 A. I believe they did. I don't recall
18 what -- I don't recall what they all were,
19 but there were either several objections
20 throughout the case -- I don't recall any
21 specific adversary proceedings.

22 Q. How about contested matters such as
23 an objection to financing, that type of
24 thing?

25 A. Yes.

1 K. Kliwer

2 Q. They did?

3 A. They did.

4 Q. Do you know if they employed any --
5 Harbert employed any financial advisors in
6 the case?

7 A. I don't recall.

8 Q. Are you familiar with the agreement
9 between the debtor -- you said you had
10 reviewed the term sheet of the agreement
11 between Wilmington, Harbert and the debtor.

12 Do you have any specific
13 recollection with regard to that agreement
14 and the payment of fees for legal advisory
15 consulting and professional fees and expenses
16 to Wilmington?

17 A. I recall as we finalized or as the
18 term sheet was finalized, and then what was
19 ultimately put into the plan of
20 reorganization was that their professional
21 fees would be paid up to a cap of \$2.25
22 million to split between Harbert and
23 Wilmington Trust.

24 And as the negotiation -- as a
25 party to the negotiations and a

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2 representative of the company, the bulk, the
3 actual negotiations were primarily between
4 the creditors committee and Wilmington Trust
5 and Harbert. The company was involved and
6 had knowledge of what was going on, and
7 obviously overall had to approve the ultimate
8 terms of the settlement.

9 And based on that, the end result
10 was rather than engage in a protracted and
11 prolonged adversary proceeding with Harbert,
12 Wilmington Trust, that these, the ultimate
13 settlement to include the cap of \$2.25
14 million to their fees was beneficial to the
15 estate and was recommended by the creditors
16 committee and reviewed by our counsel and
17 company management and determined to be
18 reasonable and ultimately paid.

19 Q. So they have been paid the 2.25
20 million?

21 A. Yes, they have.

22 Q. And since there was a cap, then is
23 it safe to assume that they actually had fees
24 and expenses in excess of 2.25 million?

25 A. Yes.

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2 Q. Do you know what the amount was as
3 of, let's say, the negotiation of their
4 agreement?

5 A. No, I don't know what their total
6 fees were. What we received was breakdown
7 between the two, between Harbert and
8 Wilmington Trust, saying here is the total up
9 to the cap and that's what we used as support
10 for paying them, along with the understanding
11 that it was provided for in the plan of
12 reorganization.

13 Q. Did you participate in your review
14 in negotiating that cap at all?

15 A. No, I did not.

16 Q. That was, as you said before,
17 between the creditors committee and Harbert
18 and Wilmington?

19 A. Correct.

20 Q. That was recommended to the debtor?

21 A. Correct.

22 Q. Did anyone from the debtor, meaning
23 the company, or its counsel participate in
24 the negotiations with Harbert and the
25 committee and Wilmington?

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2 A. I believe our counsel for Paul,
3 Hastings participated in the negotiations and
4 advised the company and company management as
5 it was playing out what the -- what was going
6 on and whether they recommended accepting the
7 settlement or not.

8 Q. Do you have any recollection as to
9 why or how it developed that the treatment of
10 class 8 through these negotiations was
11 increased?

12 A. Why the treatment was increased?

13 Q. From whatever it was in the first
14 amended plan up to the present sort of --

15 A. Okay. Yes, in essence the
16 creditors committee's desire and the
17 company's desire overall was to obtain
18 support of class A constituents, and in order
19 to do that, the creditors committee
20 determined they were willing to go up to the
21 settlement amount, and as the company
22 management reviewed that, it was deemed
23 beneficial to the estate because we knew that
24 overall we would incur less legal costs on
25 our own counsel as well as an extended

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2 bankruptcy proceedings that would have
3 obviously extended it past the confirmation
4 date that we did achieve if we hadn't, if the
5 creditors committee and the company had not
6 negotiated a settlement with class 8A
7 holders.

8 Q. And do you have any understanding
9 of how Wilmington or Harbert would be paid
10 their fees in excess of the 2.25 million
11 pursuant to the plan?

12 A. I believe the plan provided that if
13 they requested payment above that, that it
14 would have to be reviewed by the fee examiner
15 and approved by the court.

16 Q. Do you know if they have submitted
17 any such fee request?

18 A. I have not seen any submissions, so
19 I don't believe they have.

20 Q. Yet it is true that they have
21 exercised their charging lien against the
22 recovery to the TOPrS in order to pay that
23 excess?

24 A. I'm not personally aware of that.

25 Q. Before paying the Wilmington fees

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2 of 2.25 million, did the debtor review any
3 invoices or descriptions or professional fees
4 or expenses incurred by Wilmington, Harbert
5 or its professionals?

6 A. No, we did not. As I said
7 previously, the plan provided for the cap of
8 2.25 million, and it was an understanding
9 that they had exceeded the 2.25 million, so
10 we requested the split between the two and
11 that's what we used in support for paying
12 both Harbert and Wilmington Trust.

13 Q. So there is no independent review
14 of any of those fees and expenses by the
15 debtor?

16 A. Not by the debtor, no.

17 Q. How about by the debtor's
18 professionals?

19 A. Not to my knowledge.

20 Q. Do you know whether or not within
21 the context of the negotiations between the
22 committee and Harbert and Wilmington whether
23 or not the committee reviewed any invoices or
24 other description of professional fees
25 incurred?

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2 A. I'm not aware if they did.

3 Q. Do you know or have you seen any
4 document, you know, with regard to those
5 negotiations, in which prior to the breakdown
6 that you just referenced, those numbers were
7 provided to the committee even generally not
8 with the descriptions?

9 A. Not to my knowledge.

10 Q. Other than a breakdown which you
11 referred to of what should be paid to
12 Wilmington versus Harbert, did the debtor
13 receive anything prior to that regarding
14 Wilmington's fees or the fees of their
15 professionals?

16 A. Not to my knowledge.

17 Q. Have you ever heard of the firm of
18 Connolly, Bove, Lodge & Hatz?

19 A. I recall the name. I don't recall
20 specifically who they represented or what
21 their involvement was.

22 Q. How about Andrews Kurth?

23 A. I recall the name as well.

24 Q. But were they associated with
25 Harbert in Wilmington?

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2 A. I believe so.

3 Q. Now, you testified earlier that you
4 had reviewed HSBC's invoices of HSBC and
5 their professionals. Did you make a request
6 at any time to review Wilmington and
7 Harbert's?

8 A. No, we did not. Based on the cap
9 and knowing that every good attorney would
10 exceed the cap if they could, we determined
11 that that was reasonable and we paid the fees
12 up to the cap.

13 Q. To your knowledge, has the legal
14 fee examiner appointed in the case reviewed
15 any of Wilmington's bills?

16 A. Not to my knowledge.

17 Q. Any of their counsel or
18 professionals hired?

19 A. Not to my knowledge.

20 Q. Do you know why not?

21 A. I don't know -- I guess it was my
22 understanding that with intra trustee fees
23 that they weren't subject to examiner review,
24 and it was based on a negotiated settlement
25 that was approved by the creditors committee

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2 and ultimately approved by the court with our
3 plan of reorganization, that it would be an
4 unnecessary cost to incur to review those.

5 Q. Let me show you a copy of an e-mail
6 that we received in connection with the
7 production of documents. Let's see if you
8 recognize it since it is addressed to you at
9 one point.

10 A. Yes, I do.

11 MR. SNELLINGS: We'll mark that
12 as 5.

13 (Kliewer Exhibit 5, E-Mail,
14 marked for identification, as of this
15 date.)

16 Q. What we have marked as number 5,
17 have you seen that document before?

18 A. Yes, I have.

19 Q. Can you describe what it is?

20 A. This is the breakdown I referenced
21 earlier. This is essentially what we used
22 along with the documentation, the end of plan
23 reorganization, to pay Wilmington Trust and
24 Harbert their fees.

25 Q. And to the best of your knowledge,

1 K. Kliever

2 those amounts have been paid?

3 A. Yes, they have.

4 Q. And not to repeat ourselves but
5 just to make sure we're putting the right
6 point on this, other than this document, did
7 you receive any other breakdown as to how the
8 fees would be paid between Harbert and
9 Wilmington?

10 A. Not specific to the \$2.25 million,
11 no.

12 Q. And there is no other further
13 backup justifying or describing how those
14 amounts were derived?

15 A. Only the plan of reorganization.

16 Q. This e-mail is cc'd to Karen Reach.
17 Do you know who she is?

18 A. She is an attorney with Paul,
19 Hastings.

20 Q. And Phil Bentley, do you know him?

21 A. Phil Bentley, I don't recall.

22 Q. In this paragraph here where it
23 says, "In addition, pursuant to paragraph 16
24 of the confirmation order, please transfer
25 115,910.72 on account of the indenture

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2 trustee's fees and expenses."

3 Do you know what that is
4 referencing?

5 A. It is there was additional support
6 provided for those fees and I don't recall
7 offhand exactly what it was. I believe a
8 copy was provided to you.

9 Q. And was that amount paid?

10 A. Yes, it was.

11 Q. And that was over and above or in
12 addition to 2.25 million?

13 A. Yes, it was.

14 Q. And is this the breakdown that you
15 just referred to?

16 A. Yes, it is.

17 MR. SNELLINGS: Can we have that
18 marked as Exhibit 6.

19 (Kliewer Exhibit 6, Annual
20 Trustee Administration Dues, marked for
21 identification, as of this date.)

22 Q. Do you recall when you received
23 what we have just marked as Exhibit 6?

24 A. I believe we received this within a
25 week of the effective date, so probably about

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2 a week prior to November 1st.

3 Q. And with regard to that, did you on
4 behalf of the company do any investigation
5 with regard to whether or not these annual
6 trustee administration dues were due and
7 owing and whether or not the amounts were
8 accurate pursuant to the indenture?

9 A. Yes, I discussed it -- I reviewed
10 what we had paid in the prior year and
11 discussed it with our assistant treasurer
12 briefly and determined that they appeared
13 reasonable and hence we paid the fees.

14 Q. And with regard to default
15 administration charges, do you know how that
16 number of 60,023.70 was derived?

17 A. Well, that was part of the
18 discussion with Sandra Ortiz was, you know,
19 in dealing with the reconciliation of the
20 claims and other areas that she was involved
21 in. I don't know specifically what else she
22 did other than my personal dealings with her.

23 Q. But it is your understanding that
24 that was basically an hourly rate that she
25 charged and there must be some time records

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2 somewhere that would indicate a certain
3 number of hours over that period of time?

4 A. I would assume so, yes.

5 Q. You didn't ask her for a breakdown
6 of those hours?

7 A. No, we did not.

8 Q. No descriptions were given or
9 requested?

10 A. No.

11 Q. And with regard to the expenses
12 that are listed here, did you do any
13 investigation with regard to those expenses?

14 A. No, the 7,463.74 which was the
15 other half of the expenses was subject to the
16 cap as referenced in Exhibit 5. And the
17 remaining amounts didn't appear out of line
18 so we didn't request additional information.

19 Q. Now, do you have any knowledge of
20 monies that were paid to Golden & Associates?

21 A. By who?

22 Q. Wilmington or Harbert.

23 A. No, I don't.

24 Q. So other than the breakdown of
25 these three numbers with regard to the fees